

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL ALLEN HAYES,

Plaintiff,

v.

DETECTIVE BLAKEMAN, *et al.*,

Defendants.

Case No. C20-1612-JCC-MLP

ORDER RE: PLAINTIFF'S PENDING
MOTIONS

I. INTRODUCTION

This is a prisoner civil rights action brought under 42 U.S.C. § 1983. This action is proceeding against King County Sheriff's Detective Benjamin Blakeman, City of Marysville Police Officer Brandon Blake, and King County. Plaintiff's claims include allegations of excessive force, denial of adequate medical care, and destruction of property. (*See* dkt. # 12.) Currently pending before the Court are: (1) Plaintiff's motion for an order directing issuance of subpoenas (dkt. # 24); (2) Plaintiff's motions to appoint counsel and extend deadlines (dkt. ## 25, 30); (3) Plaintiff's motion to be present at all hearings (dkt. # 31); and (4) King County Defendants' motion for summary judgment (dkt. # 27). The Court addresses each of Plaintiff's

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1 pending motions below. The Court will address Defendants' motion for summary judgment by
2 separate order.

3 II. DISCUSSION

4 A. Motion for Order Directing Issuance of Subpoenas

5 Plaintiff seeks an Order from this Court directing the Clerk to issue subpoenas in this
6 case so that he may obtain documents and other evidence relating to his claims from Defendants
7 and from unnamed witnesses. (Dkt. # 24.) However, leave of Court is not required before
8 subpoenas may be issued, and, thus, there is no issue for the Court to rule on. The Clerk shall
9 treat Plaintiff's motion as a request for issuance of subpoenas and shall issue two subpoenas, in
10 blank, and return them to Plaintiff. Plaintiff is advised that he is responsible for completing the
11 subpoenas and for ensuring that the subpoenas are properly served in accordance with Rule 45(b)
12 of the Federal Rules of Civil Procedure. Plaintiff may request additional subpoenas from the
13 Clerk if necessary. The Court recommends that Plaintiff also familiarize himself with the
14 discovery rules as set forth in Rules 26 through 37 of the Federal Rules of Civil Procedure, and
15 this Court's corresponding Local Civil Rules ("LCR"), so that he will better understand how to
16 properly obtain necessary discovery from Defendants.

17 B. First Motion to Appoint Counsel and Extend Time

18 Plaintiff next requests that the Court appoint counsel to assist him in this litigation and to
19 grant him a 90-day extension of time "to obtain services." (Dkt. # 25.) With respect to Plaintiff's
20 request for appointment of counsel, Plaintiff is advised that there is no right to have counsel
21 appointed in cases brought under 42 U.S.C. § 1983. Although the Court, under 28 U.S.C.
22 § 1915(e)(1), can request counsel to represent a party proceeding *in forma pauperis*, the Court
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1 may do so only in exceptional circumstances. *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th
2 Cir. 1986); *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984); *Aldabe v. Aldabe*, 616 F.2d
3 1089 (9th Cir. 1980). A finding of exceptional circumstances requires an evaluation of both the
4 likelihood of success on the merits and the ability of the plaintiff to articulate his claims *pro se* in
5 light of the complexity of the legal issues involved. *Wilborn*, 789 F.2d at 1331.

6 Plaintiff argues in support of his motion for appointment of counsel that he is unable to
7 conduct discovery because of his incarceration and that he has exhausted all other avenues to
8 obtain representation. However, incarceration is not an exceptional circumstance sufficient to
9 warrant the appointment of counsel. Indeed, many *pro se* litigants are incarcerated and yet are
10 able to conduct discovery and otherwise litigate their actions. Inability to retain counsel
11 independently likewise does not constitute an exceptional circumstance sufficient to justify
12 appointment of counsel. Plaintiff's claims are limited in time and scope, and he has demonstrated
13 an ability to articulate the legal and factual bases of his claims without the assistance of counsel.
14 As for Plaintiff's likelihood of success on the merits of his claims, the record is not yet
15 sufficiently developed for this Court to make such a determination. Based on the information
16 available to the Court at this juncture, this Court must conclude that Plaintiff has not
17 demonstrated that his case involves exceptional circumstances which warrant the appointment of
18 counsel.

19 To the extent Plaintiff seeks a 90-day extension of time, his request is somewhat vague as
20 Plaintiff's request merely indicates a need to "obtain services." As this Court has determined that
21 Plaintiff is not entitled to appointment of counsel, the requested extension is not warranted on
22 this ground. Moreover, the Court notes that at the time Plaintiff filed the instant motion, there
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1 were only two pending deadlines, one for the completion of discovery (October 29, 2021) and
2 one for the filing of dispositive motions (November 29, 2021). Those deadlines are well in the
3 future and Plaintiff has not demonstrated good cause to extend those deadlines at the present
4 time.

5 **C. Second Motion to Appoint Counsel and Extend Time/Motion to be Present**

6 Plaintiff filed a second request for counsel and for an extension of time in conjunction
7 with what appears to be his response to Detective Blakeman and King County's motion for
8 summary judgment. (Dkt. # 30.) Plaintiff appears to assert therein that, in addition to the
9 arguments made in his original request for appointment of counsel, he has not had adequate
10 access to "law materials" including books that he has requested. (*Id.* at 1.) The Court is aware
11 that the Maleng Regional Justice Center where Plaintiff is currently confined has a legal access
12 scheme that should permit him to access necessary legal resources upon submission of an
13 appropriate request. Plaintiff's additional arguments in support of his request for counsel are
14 insufficient to establish that appointment of counsel is warranted.

15 Plaintiff also requests that he be granted a 90-day continuance to "properly address courts
16 on issues" and to "comply with court regulations." (Dkt. # 30 at 2.) Even though it appears
17 Plaintiff has presented evidence in support of his claims as a response to the King County
18 Defendants' motion for summary judgment, his response contains no legal argument. To the
19 extent Plaintiff's request for a continuance constitutes a request to submit additional argument in
20 opposition to the pending summary judgment motion, the Court is willing to grant a brief
21 extension. The Court deems a 45-day extension sufficient for Plaintiff to supplement his
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1 response to Defendants' pending dispositive motion. The Court will provide a specific deadline
2 below.

3 **D. Motion to be Present at All Hearings**

4 Finally, Plaintiff has filed a motion which he entitled "Motion to be Present at All
5 Hearings and Rubutal [sic] of Facts." (See Dkt. # 31.) Plaintiff filed this motion together with his
6 apparent response to the King County Defendants' motion for summary judgment and, despite
7 the title of the motion, it is in effect yet another motion seeking appointment of counsel and an
8 extension of time. The Court has adequately addressed those issues above and need not do so
9 again. To the extent Plaintiff requests in his motion that he be provided copies of evidence he has
10 submitted to the Court for consideration, Plaintiff is advised that he may purchase copies of any
11 evidence or briefing submitted to the Court by contacting the Clerk and identifying the specific
12 documents he wishes to obtain.

13 **III. CONCLUSION**

14 Based on the foregoing, Plaintiff's motion for an order directing issuance of subpoenas
15 (dkt. # 24) is STRICKEN as unnecessary. Plaintiff's first motion to appoint counsel and extend
16 time (dkt. # 25), and his motion to be present at all hearings (dkt. # 31), are DENIED. Plaintiff's
17 second motion to appoint counsel and extend time (dkt. # 30) is GRANTED in part and DENIED
18 in part. Specifically, Plaintiff is granted until **October 28, 2021** to file a supplemental response
19 to the King County Defendants' summary judgment motion. Defendants' motion (dkt. # 27) is
20 RE-NOTED for consideration on **November 1, 2021** and Plaintiff's second motion to appoint
21 counsel is denied.

1 The Clerk is directed to ISSUE two subpoenas in blank and to send them to Plaintiff
2 together with copy of this Order. The Clerk is further directed to send copies of this Order to
3 counsel for Defendants and to the Honorable John C. Coughenour.

4 Dated this 13th day of September, 2021.

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7 MICHELLE L. PETERSON
8 United States Magistrate Judge
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